

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF INDIANA
3 INDIANAPOLIS DIVISION

4 Case No. 1:14-cv-01589-TWP-DKL

5 RED BARN MOTORS, INC., PLATINUM)
6 MOTORS, INC., MATTINGLY AUTO)
7 SALES, INC., and YOUNG EXECUTIVE)
8 MANAGEMENT & CONSULTING)
9 SERVICES, INC., individually and)
10 on behalf of other members of the)
11 general public similarly situated,)

12 Plaintiffs,)

13 v.)

14 COX ENTERPRISES, INC., COX)
15 AUTOMOTIVE, INC., NEXTGEAR)
16 CAPITAL, INC. F/K/A DEALER)
17 SERVICES CORPORATION, successor)
18 by merger with Manheim Automotive)
19 Financial Services, Inc., and)
20 JOHN WICK,)

21 Defendants.)

22 DEPOSITION UPON ORAL EXAMINATION

23 OF NICOL ZENIA PERRY

24 TAKEN ON BEHALF OF THE DEFENDANTS

25 December 6, 2016

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EXHIBIT 9

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1 you stop working there?

2 A. Well, I actually was -- I had a boyfriend
3 at that time, and we worked the business together.

4 I left that business and opened up
5 another one, still under Car Key, but I'm doing
6 business at Platinum Motors.

7 So he kept that, and then I moved on.

8 Q. Okay. So you opened the business doing
9 business at Platinum Motors in about 2009, 2010?

10 A. Around that.

11 Q. So you stopped working with Car Key Auto
12 at that time?

13 A. Correct.

14 Q. Does Car Key Auto still exist?

15 A. No.

16 Q. Do you know when it stopped existing?

17 A. It dissipated right around, I want to say
18 '11.

19 It didn't last a year, I do know that,
20 when I left.

21 Q. And so what made you start the new car
22 business, Platinum?

23 A. Well, I was branching off, because we
24 broke up, so I was leaving him, that and starting a
25 new life, and getting another one.

1 That was, pretty much, it.

2 Q. And how many employees did you have at
3 Platinum when you first started?

4 A. When I first started, one, a secretary
5 and myself.

6 Q. And did that change over time?

7 A. It did.

8 Q. So how big did Platinum get, in terms of
9 employees?

10 A. I had a mechanic and -- about three of
11 us.

12 Actually about four of us, because I had
13 a mechanic, a sales guy, a secretary and myself.

14 Q. And when Platinum first started, was it
15 separate a company from Car Key Auto?

16 A. It was separate -- well, it was supposed
17 to be completely separate, but the way that we had it
18 set up was I was leaving that, opening up the new one.

19 I signed a contract with every --
20 everything would be set up, we had a floorplan
21 account.

22 So that account we signed off was going
23 to be over there, and I was starting fresh and new,
24 but I kept the corporation as the umbrella, just for a
25 few months, and then I switched off.

1 Q. Let me see if I'm understanding --

2 A. Okay.

3 Q. -- you right.

4 So when Platinum first started, it was
5 under the umbrella of Car Key Auto, the corporation,
6 but then eventually it became its own separate
7 independent company with no ties to Car Key Auto; is
8 that right?

9 A. Correct.

10 Q. And when did it become separate and
11 independent from Car Key Auto?

12 A. The exact day, I couldn't tell you, but
13 probably -- when that lease ended over there is when I
14 changed it to Platinum, Inc. doing business as
15 Platinum, but I couldn't tell you the exact dates.

16 Q. And when you say the lease ended, what
17 were you referring to?

18 A. There was still a lease at Car Key Auto
19 that was in my name.

20 So when I -- when we did the separation,
21 when we signed the paperwork, when the lease was to
22 end, it was supposed to go solely in his name.

23 So when that lease ended and that
24 contract was over, that's when.

25 Q. And when you're referring to a lease, do

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1 you mean a lease for property, like, for the lot --

2 A. Yes, the lease to the lot.

3 Q. So prior to when the lease ended, were
4 Car Key Auto and Platinum using the same lot?

5 A. No, no, no. They were two separate
6 entities, two separate cities.

7 Q. Okay. So for a certain time period, the
8 lease for Car Key Auto's lot was in your name, but
9 then you also had a separate lot for Platinum Motors;
10 is that right?

11 A. Correct.

12 Q. So where was Car Key located?

13 A. On Little Creek Road in Norfolk.

14 Q. And where was Platinum located?

15 A. Well, the first one was in Newport News;
16 the second one was on Indian River Road in Chesapeake.

17 Q. All right. So how long did Platinum
18 exist?

19 A. Probably five years.

20 Q. And at what point did it stop existing,
21 like, in 2014?

22 A. '14, yeah.

23 Q. And why did you wind up that business?

24 A. Well, pretty much finances, and just the
25 decision to move on.

1 Q. When you say, "finances," what do you
2 mean by that?

3 A. Just issues in the financing, and, you
4 know, trying to keep up with the dealership, and the
5 day-to-day operations.

6 Q. During that time, from about 2009 to
7 2014, was Platinum the only business you were involved
8 in?

9 A. 2009? I'm into so much stuff. Let me
10 think.

11 Solely, yes, but if I had my hands in
12 something else it wasn't major.

13 Q. And what did you do after Platinum
14 wrapped up?

15 A. Sold real estate.

16 Q. And did you -- are you with, like, a real
17 estate company?

18 A. Yes.

19 Q. Which one?

20 A. Wainwright.

21 Q. And is that what you're doing currently?

22 A. Yes.

23 Q. So you've been doing that since about
24 2014?

25 A. Well, I've dabbled, until I got my

1 license.

2 Actually, I got my license the same year
3 that I got my dealer's license, so I've been dabbling
4 in it, but not full time.

5 Q. And when did you get your dealer's
6 license?

7 A. 2008.

8 Q. And is there a particular type of
9 dealer's license that you got?

10 MR. AIREY: Object to the form.

11 Are you talking about real estate, or the
12 cars, now?

13 BY MS. LEDBETTER:

14 Q. I'm sorry.

15 The cars?

16 A. Is there a particular dealer's license?

17 There's only one type.

18 Q. Okay. So there's not a separate license
19 for used cars versus new cars, for example?

20 A. It could possibly be, but I did used
21 cars.

22 I think there is a difference for a -- if
23 you're working for a franchise dealership.

24 I think so.

25 Q. So your license was a used cars dealer's

1 license?

2 A. Yes.

3 Q. And you said you got your real estate
4 license in the same year, 2008?

5 A. Yes.

6 Q. So you may have used here and there since
7 2008, but you went full time with it in 2014?

8 A. Yes.

9 Q. Is there any other jobs or businesses
10 you've been involved with that we haven't talked
11 about?

12 A. I've had a few, that's relevant, that's
13 probably it.

14 Q. So you may have dabbled in other things
15 here and there?

16 A. Yeah, I'm always into something.

17 Q. You're an entrepreneur.

18 A. Yes.

19 Q. So when you were working at your car
20 dealerships with Car Key Auto and Platinum Motors,
21 what types of jobs did you do with those dealerships?

22 You mentioned that you did sales to
23 retail customers?

24 A. Mostly, I went and purchased vehicles and
25 brought them back to the lot.

1 That was my job. Just going out and
2 purchasing them.

3 Q. And where did you purchase vehicles from?

4 A. Several auctions.

5 Q. So what auctions did you go to?

6 A. American Auto Auction, Tidewater Auto
7 Auction, Manheim Pennsylvania, Manheim New Jersey,
8 Manheim Fredericksburg, Aycock [sic] Auto Auction.

9 Q. What's that last one?

10 A. Aycock.

11 Q. How do you spell that?

12 A. A-Y-C-O-C-K. I think that's a Manheim
13 auction, also. Richmond Auto Auction.

14 Just off the top, I can remember those,
15 because I frequent those.

16 Q. And did you go to all those auctions with
17 both Car Key Auto and with Platinum?

18 A. I did not.

19 Most of those were with Car Key.

20 Platinum, I kind of scaled back.

21 Q. So which auctions did you go to when you
22 were with Platinum?

23 A. Platinum, probably Fredericksburg and
24 Tidewater Auto Auction, mostly.

25 Q. At Car Key and Platinum, did you get

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1 vehicles from other sources other than auctions?

2 A. Yeah. I purchased from individuals.

3 Where else? Craigslist, other dealers.

4 That's about it.

5 Q. And when you say you "purchased from
6 individuals," is that, like, customers doing
7 trade-ins, or is that something different?

8 A. Oh, yeah, we had some trade-ins, but I'm
9 just saying, like, an individual, like a person like
10 you, who wanted to sell your car.

11 Individual, like that.

12 Q. Even if I wasn't trading it in?

13 If I just wanted to sell you a car, you
14 might buy that?

15 A. Yes.

16 Q. And then you also did trade-ins, I take
17 it?

18 A. Yes.

19 Q. Did you, at Car Key Auto or Platinum,
20 handle the accounting or finance side of the
21 dealership?

22 A. Well, I had a DMS system, which, pretty
23 much, did the numbers for me.

24 Q. Is there a name for that system?

25 A. Oh, my goodness. What was the name of

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1 that system?

2 I want to say it was Auto Tracker,
3 something like that.

4 Q. And so when you say it did the numbers
5 for you, what did that mean?

6 A. What that means is you purchase the
7 vehicle, you put the receipt numbers in it, you know,
8 what you paid for it, when you bought it, and it
9 calculates everything for you, from the time you put
10 it in the system from the sale.

11 From the time of purchase until the time
12 you sold it.

13 Q. And when you say, "it calculates
14 everything," what does it calculate?

15 A. It calculates the time that you purchased
16 it, on the market, how much you made off of it, pretty
17 much everything from beginning to end, it did the
18 calculation.

19 It was made specifically for car dealers,
20 so, you know, we didn't have to do the finance work.

21 Q. Are you familiar with floorplan
22 financing?

23 A. I am.

24 Q. And is your understanding that a
25 floorplan is basically a line of credit that allows

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1 you to buy vehicle inventory?

2 A. Yes.

3 Q. When you were at Car Key Auto, did you
4 have any floorplans?

5 A. Yes.

6 Q. And what company or companies did you
7 have floorplans with?

8 A. AFC, DSC, and Manheim gave us a lot of
9 credit.

10 Q. When you say, "Manheim," was that Manheim
11 Auto Financial Services, MAFS?

12 A. MAFS, that's what it was called, yeah.

13 Q. So at Car Key, do you recall what your
14 line of credit was at AFC?

15 A. AFC, I think, was 60 -- one was like 60,
16 one was like 90, one was like 120.

17 I can't really recall the exact numbers,
18 but they were right around that.

19 Q. And when you say 60/90/120, that's a line
20 of credit of 60,000, 90,000, 120,000?

21 A. Correct.

22 Q. And you don't remember which one was
23 which?

24 A. No, because I remember getting an
25 increase on one, I can't remember, you know --

1 Q. Which ones?

2 A. -- where it went.

3 Yeah. I was getting so much, that I let
4 one go, kept two, then let another one go.

5 Q. And when you were at Platinum, what
6 floorplan company or companies did you have a
7 floorplan with?

8 A. I had at -- DSC.

9 Q. With Platinum, did you have a floorplan
10 with AFC or Manheim?

11 A. Yes.

12 Q. And do you recall how large your line was
13 with DSC?

14 A. No.

15 Q. Does \$35,000 sound about right?

16 A. Maybe.

17 Q. We'll look at some documents later that
18 might help you with that --

19 A. Jog my memory, right?

20 Q. Yes.

21 So when you were with Platinum, did you
22 have, like, a job title?

23 A. Owner/operator, dealer/operator.

24 Q. You said you were the owner?

25 A. Correct.

1 Q. Were there any other owners of that
2 company?

3 A. No.

4 Q. Do you still have an active dealer
5 license?

6 A. No.

7 Q. Do you know when that lapsed or went
8 inactive?

9 A. Last week.

10 Q. I just have a general question about
11 dealer licenses.

12 So when you were with Car Key and when
13 you were with Platinum --

14 A. Uhm-hmm.

15 Q. -- did those companies have separate
16 dealer licenses?

17 A. No. Did it have separate dealer
18 licenses?

19 No. It had the same dealer licenses.

20 Q. And was that your license?

21 A. Yes.

22 Q. So from 2008 through last week, you had a
23 dealer license that you used both when you were at Car
24 Key Auto and when you were at Platinum Motors?

25 A. Yes.

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1 Q. And you mentioned that you had -- there
2 were four employees at Platinum, I think that included
3 yourself, right?

4 A. Yes.

5 Q. So can you tell me what those employees
6 did --

7 A. Actually, you know what?

8 No. There were two separate dealers'
9 license [sic], because he took the dealer's license
10 and he had one, and I had a different one.

11 So there were two separate.

12 Q. So is the dealer's license that you got
13 in 2008, is that the same license that lapsed last
14 week?

15 A. No, it's different.

16 Q. Okay.

17 A. The dealer/operator license -- I think
18 we're confusing the license with the -- all right.

19 When I left Car Key -- you have to have a
20 dealer/operator. So they have to get a license to
21 operate that dealership unless they're under the same
22 entity.

23 So when I left, he had to get a separate
24 dealer/operator license, which when he got his, then I
25 didn't have that one there anymore, I got it at

1 Platinum.

2 Now the Platinum -- and the license goes
3 to the dealership. The dealer/operator license stays
4 with the -- I'm trying to -- stays with the person.

5 If -- do you understand what I'm saying?

6 Q. I think so.

7 MR. AIREY: Are you saying it stays with
8 the lot location, it's lot-specific?

9 THE WITNESS: No. Well, you can't have
10 two dealer licenses -- two licenses -- two separate
11 licenses at the same dealership.

12 BY MS. LEDBETTER:

13 Q. So am I -- let me see if I'm getting this
14 right or not, I may not be.

15 So if you have a dealer license and you
16 own a dealership, your dealership -- there has to be
17 somebody at the dealership who has a dealer license?

18 A. Correct, a dealer/operator license.

19 Q. Right. And so with Car Key Auto, at
20 first that was you --

21 A. Correct.

22 Q. -- and then the next --

23 A. When I leave, someone else --

24 Q. When you left?

25 The gentleman who took over had his own

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1 dealer license, and he became the dealer/operator for
2 Car Key?

3 A. Correct.

4 Q. And you still had your dealer license,
5 but now you were the dealer/operator for Platinum?

6 A. Correct.

7 Q. Okay. And then after Platinum, you had a
8 dealer license, but you didn't have a dealership; is
9 that right?

10 A. Correct. You can always have a dealer's
11 license.

12 'Til last week I had to make a decision,
13 was I going to keep it or not? And I just was, like,
14 no, and I didn't, you know, recertify.

15 Q. Do you have to do anything to recertify
16 your license?

17 A. Yes. You have to take a test.

18 Q. And how often do you have to renew and
19 recertify your license?

20 A. Every two years.

21 (Perry Exhibit No. 2 was marked.)

22 BY MS. LEDBETTER:

23 Q. This is Exhibit 2, and this is a document
24 that we got from the Virginia, I guess, State
25 Corporation Commission records.

1 Does this accurately reflect that
2 Platinum first, I guess, registered to do business in
3 April 2011?

4 A. Yes.

5 Q. And does that sound about right, when
6 you -- when Platinum became an independent entity?

7 A. Yes.

8 Q. And when we were talking before, is that
9 when you started working at Platinum, or when the two,
10 Car Key Auto and Platinum, became totally separate?

11 A. This was a little bit after, because we
12 still had months on the lease.

13 So after that lease ran out, I left in
14 probably nine, ten -- wait a minute, this is Indian
15 River?

16 When I left, I started another one that
17 was before this one.

18 Q. Another dealership?

19 A. Right, that was Car Key doing business at
20 Platinum Motors.

21 This is when I moved to Indian River and
22 I did Platinum Motors, Inc. doing business as Platinum
23 Motors.

24 So this came after, but these dates
25 are -- that's about right.

1 Q. So this is when you became Platinum
2 Motors, Inc. doing business at Platinum Motors?

3 A. Yes.

4 Q. And that was in April 2011?

5 A. Yes. That's when I did the paperwork.

6 Q. And so Platinum Motors, Inc. was a
7 Virginia corporation?

8 A. Yes.

9 Q. And according to Exhibit 2, Platinum's
10 status as a corporation was terminated, right?

11 A. Where does it say termination?

12 Q. Right under date of formation.

13 It says, Status.

14 A. I'm getting old.

15 Yes.

16 Q. Do you know when Platinum's status as a
17 corporation was terminated?

18 A. I don't -- I had a termination letter,
19 because I didn't pay the hundred dollar fee and then I
20 had to get it reinstated.

21 So I don't know if this was that time, or
22 not.

23 Q. When you had that termination letter, did
24 you get the corporation reinstated?

25 A. Yes.

1 Q. And when was that?

2 A. Probably shortly after.

3 They only give you a certain timeframe.

4 Q. But, I mean, was that, like, 2014?

5 A. It was not -- no, it would have been the
6 same year.

7 When they send you a termination letter,
8 because I was still doing business, so I had to keep
9 this current --

10 Q. Uhm-hmm.

11 A. -- but they didn't get the fee on time.

12 So it was probably right -- if this was
13 November, probably right around -- unless this is when
14 I moved. Hold up. Let me get it right.

15 Because I signed my lease.

16 I could have terminated it in Newport
17 News and then restarted it.

18 I'm not exactly sure, to be honest.

19 Q. Okay. Do you know if Platinum Motors,
20 Inc. is currently an active corporation?

21 A. No, it's inactive.

22 Q. And when did it become inactive?

23 A. Sometime in 2014 when I shut the business
24 down.

25 Q. Do you know when in 2014 you shut the

1 business down?

2 A. It was -- I don't know, June or July.

3 Q. So Platinum Motors, Inc. doesn't do any
4 business currently, right?

5 A. No.

6 Q. And did Platinum Motors, Inc. ever file
7 for bankruptcy?

8 A. Yes.

9 Q. And have you personally ever filed for
10 bankruptcy?

11 A. No.

12 Q. So earlier you said there were three or
13 four employees at Platinum Motors, Inc.

14 Can you tell me who they were and what
15 they did?

16 A. We had a secretary. She did most of
17 the -- all the paperwork, pretty much. I brought it
18 in, she inputted it, did the daily operations of the
19 secretarial duties.

20 I had a mechanic, a sales guy, and
21 myself.

22 Q. This may seem like an obvious question,
23 but what did the mechanic do?

24 A. The mechanic worked on the vehicles to
25 make sure they could operate properly.

1 Q. Did he work on vehicles after you had
2 bought them?

3 A. Yes.

4 Q. But before they were sold to customers?

5 A. Yes.

6 Q. Was it the same individuals who were
7 doing these jobs during the whole time that Platinum
8 existed?

9 A. The same people worked on the vehicles?

10 Q. (Moves head up and down.)

11 A. No. I know a whole lot of mechanics, so
12 they would come and help me out.

13 Q. And were the mechanics, were they
14 employees of Platinum?

15 A. No. They worked there, but, no, they
16 just helped me out, but they were not employees.

17 Q. And was the sales guy an employee of
18 Platinum?

19 A. Yes, he was.

20 Q. And was it the same sales guy for the
21 whole time?

22 A. Yes.

23 Q. And what about the secretary, was it the
24 same person the whole time?

25 A. Yes.

1 Q. And she was an employee of Platinum?

2 A. Yes.

3 Q. Who is Edith Murray?

4 A. My cousin.

5 Q. And was she employed by Platinum?

6 A. She was employed by Car Key.

7 Q. And what did she do at Car Key?

8 A. She was the secretary and a salesperson.

9 She ended up getting her salesperson's
10 license.

11 Q. Did she ever work for Platinum?

12 A. No -- well, she did for a -- because she
13 was my cousin, but she wasn't an employee.

14 Q. So she may have done some work for
15 Platinum, but she wasn't a paid employee?

16 A. Right.

17 Q. And what work did she do for Platinum?

18 A. She pretty much would just come there and
19 look over the cars, look over the paperwork, and, you
20 know, whatever I needed, or if I needed her -- or just
21 being nosy.

22 Q. Did she sell cars for Platinum?

23 A. No. She sold cars for Car Key.

24 Q. So was her role with Platinum more on the
25 secretarial side?

1 A. For Platinum -- she didn't work for me.

2 She's my family member, so she would just
3 come there, you know, because we were just bonded from
4 the first dealership, but she didn't actually work for
5 me.

6 Q. Right. But you said she would come by at
7 Platinum and look over the cars and paperwork.

11 A. Yes, exactly.

12 Q. And who's Kim Martin?

13 A. My secretary at Platinum.

14 Q. So I want to ask you a little bit about
15 Platinum's operations.

16 So did Platinum specialize in a
17 particular type of buyer that it sold to?

18 A. I guess you could say -- mostly, no, I
19 can't say it was a special type of buyer.

20 We did different type of vehicles, so.

21 Q. And was there any particular type of car
22 that Platinum specialized in, like, American versus
23 imports?

24 A. Yes, Hondas and Toyotas was my niche, at
25 one point.

1 Take the bill of sale to the bank, and
2 they would get the check.

3 Q. Do you recall, ballpark, how much of
4 Platinum sales were cash versus buy-here-pay-here?

5 A. The percentage?

6 Q. (Moves head up and down.)

7 A. Probably -- probably 30 percent, maybe,
8 buy-here-pay-here.

9 Q. And you said you thought Platinum didn't
10 really do trade-ins?

11 A. No. We didn't really do that many
12 trade-ins.

13 That wasn't a big thing for us.

14 Q. When you were at Car Key -- and I think
15 you said people did do trade-ins, right?

16 A. Right.

17 Q. So when customers did trade-ins at Car
18 Key, would Car Key give some kind of credit for those
19 traded-in vehicles?

20 A. We would -- let's say you had a car; we
21 would Blue Book it.

22 Say it was worth \$500, and then they can
23 trade that in, and then we'll tack the rest of it on
24 to the next car.

25 So we'd say, all right, you have a

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1 trade-in that's worth \$500, we'll give you \$500.
2 Well, of course, we have to make the profit. So if it
3 was worth -- let's say, it's Blue Booked at 500, then
4 we'll say, okay, we'll give you 300 for it.

5 Q. And so if I then wanted to go buy a car
6 that cost \$2,000, then I'd just have to pay \$1700?

7 A. Right, we'd take the \$300 away.

8 Q. So if I'm buying that car using like a
9 buy-here-pay-here-type deal, do I only finance the
10 \$1700 or do I finance the whole \$2000?

11 A. Well, at that time we were doing a flat
12 rate. Before we had -- we didn't have DMS for that
13 over there, we were doing a flat rate, but when I got
14 to Platinum, is when we put that system in place.

15 So there was no interest accrued on that.
16 I don't think so, no.

17 Q. So just to make sure I understand.

18 At Car Key, you weren't really doing
19 buy-here-pay-here-type deals?

20 A. We did a few -- we just didn't do -- we
21 didn't do a lot on either one.

22 We did a few buy-here-pay-here, but it
23 was mostly cash --

24 Q. But --

25 A. I'm sorry.

1 Q. -- sorry. I didn't mean to interrupt.

2 At Car Key, the buy-here-pay-here just
3 worked a little bit differently, is what you're
4 saying?

5 A. Correct.

6 Q. And what was the difference?

7 A. The difference is we did a flat rate with
8 them, and then we got the DMS -- we were introduced to
9 the DMS that accrued interest.

10 We used that system at Platinum. We
11 didn't have that at Car Key.

12 Q. So because you didn't have the DMS system
13 at Car Key, you would basically just do
14 buy-here-pay-here deals that might be 500 down and
15 \$200 a month, and that was it?

16 A. Yes, just flat rates, because we didn't
17 have -- you know, we didn't want to calculate all that
18 stuff, so we just didn't do interest.

19 Q. So when you were at Platinum and you went
20 to auction, how often did you go to auctions?

21 A. When I was at Platinum?

22 Q. (Moves head up and down.)

23 A. Probably once -- once or twice a week,
24 maybe.

25 Q. And how did the process of buying a car

1 from an auction work?

2 Can you, sort of, walk me through that?

3 A. You go to the auction. You check out the
4 car, see if it's something you like, look it up and
5 see what it was worth, and when the auction starts,
6 you go out and you bid against the other dealers.

7 Q. And then what happens if you win a bid?

8 Can you walk me through what that process
9 is?

10 A. At that point you win the bid, then they
11 print the ticket, and you take the ticket to the front
12 desk, and you pay for it.

13 Q. Do you have to register to bid at an
14 auction?

15 A. You do --

16 Q. And so you --

17 A. -- that's the main part.

18 When you come in the door you register.
19 I missed that part.

20 Q. Do you register every time you come to
21 the auction?

22 A. Yes.

23 Q. Or just once and they know who you are
24 after that?

25 A. No. You register.

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1 You have to have a business badge.

2 Q. So I think you said when you were at
3 Platinum, you had a floorplan with DSC, right?

4 A. Yes.

5 Q. Do you have to tell the auction that you
6 have a floorplan?

7 A. They know.

8 Q. How do they know?

9 A. Because they have a representative
10 sitting behind the counter.

11 Q. They, being DSC?

12 A. DSC.

13 Q. Okay. So you said when you win a bid at
14 an auction, you get a ticket, you go to the front
15 desk, and you pay for the car, right?

16 And so do you pay the auction or the
17 seller?

18 A. You pay the auction.

19 Q. And why do you pay the auction?

20 A. You pay the auction, they pay the seller;
21 because they're in control.

22 Q. Do you know when they pay the seller?

23 A. No, I don't.

24 Q. And are there different ways that you
25 could pay the auction, like, cash?

1 A. Cash, check, if you're using somebody
2 like DSC, you just give them your receipt, and then
3 they take care of that paperwork.

4 Q. And when you say give them the receipt,
5 do you mean the DSC person, or the auction?

6 A. The DSC person.

7 If you're paying -- if you're going there
8 from the auction, and you're paying with DSC, you go
9 to the DSC rep, you give them your ticket, and they
10 take care of the rest.

11 Q. If you're paying by cash or check, do you
12 pay the -- you pay the auction person --

13 A. (Inaudible) --

14 Q. -- rather than the DSC person?

15 A. -- correct.

16 Q. Do you have to pay the auction on the day
17 that -- on the day that you purchase the vehicle?

18 A. Yes.

19 Q. And, in other words, you have to pay the
20 auction on the date of the auction?

21 A. Yes.

22 Q. When you were with Platinum, did you have
23 any special payment arrangements with any auctions?

24 A. No.

25 Q. So, for example, did you have a float

1 period with auctions?

2 A. A float? No.

3 Q. And what's your understanding of a float?

4 A. I know that a float is that you can take
5 the car and pay them later, no.

6 But what you could do is, like with
7 Tidewater, if you -- they gave you, like, maybe a few
8 days to come pick it up and pay for it and come, and
9 maybe 24 hours to 48 hours, something like that, but
10 you could not take the vehicle.

11 Q. So if you -- so -- sorry.

12 To make sure I understand, at Tidewater
13 you could take a few days to decide how you wanted to
14 pay for the vehicle, but during that time period
15 before you paid, you couldn't take the vehicle with
16 you; is that right?

17 A. Let's say I purchased a vehicle, and I
18 had to go or I had to go get it checked or something,
19 come back, and I couldn't get there until the next
20 day, then I can pay for it and then pick up the car,
21 but they will not release the car until you pay for
22 it.

23 Q. When you use your DSC floorplan at an
24 auction, could you take the car immediately?

25 A. Yes.

1 Q. So, basically, if you want to bid and you
2 wanted to floorplan it, so you gave the DSC person
3 your paperwork, you'd just give the DSC person the
4 paperwork and leave with the car?

5 A. (Witness moves head up and down.)

6 They gave you a release ticket, and then
7 you could go get your car.

8 Q. Who gave you the release --

9 A. It's like cash.

10 Q. Who gave you the release ticket?

11 A. The auction.

12 Q. So other than cash and the floorplan,
13 were there any other ways that you paid for a vehicle
14 at auctions while you were at Platinum?

15 A. Check.

16 Q. Was that --

17 A. Company check or cash. That's it.

18 Cash, check, or finance company.

19 Q. And so you would never get to take the
20 car without paying for it, right?

21 A. No.

22 Q. Are titles always present on auction day?

23 A. No.

24 Q. How often would you say you bought a car
25 without a title?

1 A. Probably -- it depends, because you can
2 see when you're purchasing it if the title is here or
3 not, it tells you that.

4 So, I don't know, it depends on how bad I
5 wanted the car, and which company it was, because some
6 companies will hold your title forever, and so you
7 keep that in mind when you purchase it.

8 Q. So what are some companies that would
9 hold your title for a long time?

10 A. Just to name one, Priority.

11 They were just known for that.

12 Q. Have you ever been able to sell a car to
13 a retail customer before you actually got the title?

14 A. Well, they had kind of rules with that,
15 like you got generous if you do that.

16 Q. Did you ever do it?

17 A. I can't say that I did.

18 I could have, but I can't remember.

19 I know I fixed one before. I got the
20 mechanic to fix it, and then the title didn't come in,
21 and that money was just a loss.

22 First and last time.

23 Q. If the title doesn't come in, can you get
24 the transaction unwound?

25 A. You can, but if you make any repairs or

1 anything, you can't get that back.

2 Yeah. If the title doesn't come in, you
3 just return the car.

4 Q. So did you ever buy cars at auction when
5 title was not present on auction day?

6 A. Yes.

7 Q. How often would you say that happened?

8 A. I couldn't tell you how often.

9 Maybe 50/50.

10 Q. So after you buy a car at auction, what
11 do you do with it?

12 A. I take it to the lot, get it inspected,
13 and ready for sale.

14 Q. What do you do to get a car ready for
15 sale?

16 A. Well, the first thing you do is have a
17 mechanic check it and see what parts you need. Order
18 the parts, get it ready for inspection. Take it and
19 get it -- state inspection.

20 Get it state inspected, and then put it
21 on the lot for sale.

22 Q. And what was the last thing you said?

23 A. You can put it on the lot for sale.

24 Q. And how long does that process take,
25 between the time that you take the vehicle back to the

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1 lot and the time that you put it up for sale?

2 A. It depends on the vehicle.

3 You can have a vehicle that you have to
4 order a transmission for, and you need some parts out
5 of town.

6 So it just depends on the vehicle, what
7 it needs.

8 Q. Was there an average while you were at
9 Platinum of how long that process would take?

10 A. It -- like I said, it depends on the
11 vehicle, because you just don't know what vehicle may
12 need what.

13 Some vehicles, I can get ready in a day
14 or two, some maybe 30 days, just depending on what I
15 needed.

16 Q. So would there be occasions where you
17 might put a car on the lot for sale before the title
18 came in from the auction?

19 A. Yeah.

20 Q. All right. So we talked a little bit
21 about floorplans.

22 And what's your understanding of how the
23 floorplan works, just generally?

24 A. They'll give you a line of credit to use,
25 and you have terms where you need to pay them back by

1 a certain time, and if not, then there's, like, a
2 curtailment fee after that timeframe, and there's a
3 second curtailment fee after that timeframe.

4 That's pretty much it.

5 Q. So the floorplan allows you to obtain
6 inventory for resale, right?

7 A. Yes.

8 Q. And you aren't limited to using your
9 floorplan at auctions, right?

10 You can use it to purchase cars directly
11 from other dealers?

12 A. From other dealers?

13 Q. (Moves head up and down.)

14 A. I've never done that part, so I'm not
15 completely sure.

16 Q. Have you only used your floorplan to buy
17 cars at auction?

18 A. (Witness moves head up and down.)

19 Q. Is that a yes?

20 A. Yes, yes. I'm sorry.

21 I think maybe I have bought -- I'm not
22 sure. Probably in the beginning. It's been so long.

23 I think I have used it to purchase from
24 another dealer. I think I have. I'm not exactly
25 sure, because I can kind of remember asking about that

1 process, how that works.

2 Q. Do you remember how that process works?

3 A. I don't.

4 Q. So you think you may have used your
5 floorplan to buy a car from another dealer, but you
6 don't really remember how that happened?

7 A. Correct.

8 Q. Can you finance a car using your
9 floorplan with a car that you've already purchased,
10 say, in cash?

11 A. I purchased the car in cash?

12 Yes, you can.

13 Q. So after you purchase the car, cash, you
14 can put it on your floorplan?

15 A. Yes.

16 Q. How does that work?

17 A. You just call them up and say I have a
18 car.

19 You have to give them the title, and
20 they'll put it on the floorplan.

21 Q. Do you have to give them the title and
22 the bill of sale?

23 A. The bill of sale?

24 I don't think so. I think the title is
25 all that's needed.

1 Q. And was that true at all the floorplan
2 companies that you worked with, or just at DSC?

3 A. I believe it was the same for all of
4 them.

5 They pretty much all work the same.

6 Q. Okay. At what point did you first learn
7 about floorplanning?

8 A. As soon as I got my license, they were
9 flooding me.

10 Q. So once you got your license, the
11 floorplan companies were offering you --

12 A. Reps were offering me, yeah.

13 Q. So for a dealer like Platinum, what's the
14 benefit of using a floorplan?

15 A. To free up your money to do other things.

16 Q. And so what do you give the lender in
17 exchange for being able to use this money to acquire
18 vehicle inventory?

19 A. What do I give them?

20 Q. (Moves head up and down.)

21 A. What do you mean, what do I give them?

22 Q. Do you have to pay interest and fees for
23 the use of money to pay --

24 A. Yes. You pay them the fees.

25 Those curtailment fees that I was telling

1 you about.

2 Q. And you pay interest as well; is that
3 right?

4 A. Yes, there was interest there.

5 Q. And do you have to grant the lender a
6 security interest in the vehicle inventory that you
7 purchased using a floorplan?

8 A. What do you mean, do I have to grant
9 them?

10 Q. Do they have a right to the inventory
11 that's purchased with the floorplan?

12 A. They do.

13 Q. And that's their collateral for the loan,
14 right?

15 A. Correct.

16 Q. Just to make sure that question's clear.

17 The inventory is collateral for their
18 loan, right?

19 A. Right.

20 Q. You said you had a line of credit with
21 DSC, right?

22 A. Yes.

23 Q. Are you familiar with NextGear Capital?

24 A. Yes.

25 Q. And did you ever have a line of credit

1 with NextGear Capital as opposed to DSC?

2 A. When they switched over, I guess, yeah, I
3 was connected to them also.

4 Q. Do you know when that happened?

5 A. Maybe somewhere between '11 and '14,
6 maybe.

7 I don't know exactly. I just know I got
8 the paperwork and I was connected.

9 Q. Did you ever sign a contract that, you
10 know, had NextGear Capital on it as opposed to DSC?

11 A. I believe so.

12 If I didn't, I signed up with DSC and
13 they became NextGear, I'm not for sure exactly what
14 that timeframe was, but I do remember seeing NextGear.
15 They switched the loan.

16 Q. Did you ever have a floorplan a car with
17 NextGear as opposed to DSC?

18 A. See, I'm not sure, because they switched
19 in that timeframe, so I'm not sure if it was DSC or if
20 it was NextGear. I thought they were one and the
21 same.

22 Are they one and the same? They're one
23 and the same, aren't they?

24 Q. I think you were right earlier when you
25 said DSC essentially became NextGear.

1 A. Okay.

2 Q. I mean, that's very simplified, but I
3 think that's probably right.

4 A. Okay.

5 Q. Okay. And you said Platinum did not have
6 any floorplans with any other companies other than
7 DSC, right?

8 A. Correct.

9 Q. Is there any reason that Platinum didn't
10 have a floorplan with, like, AFC or MAFS?

11 A. Yeah. Well, actually, AFC, I couldn't
12 get a floorplan with them. And DSC, I didn't even
13 want a floorplan anymore after the hardship that I
14 went through, I was doing away with floorplan and just
15 using cash.

16 It was easier for me.

17 Q. I just want to clear up something you
18 just said.

19 So you said with AFC you couldn't get a
20 floorplan, and you said with DSC, you didn't want a
21 floorplan?

22 A. Right.

23 Q. But you had a floorplan with DSC, right?

24 A. Right, but just after, you know, having
25 to pay all those fees and all that stuff, I didn't

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1 want a floorplan anymore.

2 Q. So you're saying after, like, 2014, you
3 didn't want a floorplan anymore?

4 A. Just after using them from Car Key, and,
5 you know, paying all the fees, it just becomes a
6 headache trying to keep up with all of it.

7 So, for me, it was just better to just
8 pay cash for my cars, and count my money, and be on my
9 way.

10 Q. So when you had a line of credit with DSC
11 when you were at Platinum --

12 A. Yes.

13 Q. -- how did you know when and how much to
14 pay DSC?

15 A. They sent me -- they -- well, it was two
16 ways.

17 You could call and they would tell you,
18 or you'd have a receipt on how much you had to pay.

19 Q. When you say --

20 A. But, normally, we knew -- what we did was
21 we wrote down the date -- or she put in the system the
22 date of when the curtailment would come, so we would
23 try to, like, get it sold before then.

24 So we knew the curtailment dates.

25 Q. So you're saying when you put a car on a

1 floorplan at the auction --

2 A. Uhm hmm.

3 Q. -- the DSC who you gave the paperwork to
4 would give you a receipt and would tell you the
5 curtailment date?

6 A. Right. Yes, we would have the
7 curtailment date.

8 Q. But you would get the curtailment date
9 from the DSC representative at the auction?

10 A. I can't remember if it was on that
11 paperwork.

12 Normally we would just call, but I can't
13 remember exactly how that worked.

14 I know when you went to them they pretty
15 much were there to call and make sure the funds were
16 available and to just approve it.

17 Q. When you say "they," do you mean auction,
18 the person at the auction?

19 A. The DSC rep.

20 They would call DSC because sometimes
21 your name wouldn't be on the paper, it just didn't
22 make it for that day, so they would call and just make
23 sure. And then they would say, okay, you're okay,
24 then you could get the receipt printed up.

25 Q. So the DSC rep would call at the auction,

1 would call and make sure you had credit available to
2 purchase a vehicle on your floorplan, right?

3 A. Right.

4 Q. And then the DSC representative would
5 also give you a receipt showing how much you owed or
6 what --

7 A. No, it didn't work that way.

8 They would approve it, and then the
9 auction would give you a receipt.

10 I don't think they -- they wouldn't give
11 receipts. They didn't write receipts.

12 Q. DSC wouldn't write receipts?

13 A. Right.

14 Q. The auction would give you a receipt
15 showing what the purchase price was of the vehicle?

16 A. Correct.

17 Q. Did you ever receive --

18 A. I know how we found it.

19 We had -- we could go into DSC. We were
20 actually tapped into them where we had to have the
21 system, but we could go and look it up.

22 That's how.

23 Q. So you could go online and look up --

24 A. Right, or could call them.

25 Yes, we could go online, but we would

1 normally call them and they would tell us.

2 Q. So, generally, you'd call the DSC
3 representative and that person would tell you how much
4 you owed?

5 A. Right.

6 Q. Or you could go online and the system
7 would show you how much you owed?

8 A. It would say -- yes, and the date of the
9 curtailment.

10 Q. Did you ever receive account statements
11 from DSC?

12 A. Yes.

13 Q. How did you get those?

14 A. They were mailed or we can go there,
15 because they were local, at one point.

16 That's pretty much how we got them.

17 Q. How often did you receive account
18 statements in the mail from DSC?

19 A. I couldn't tell you the exact --

20 Q. Maybe like once a month?

21 A. -- but I know -- I think the curtailments
22 were probably -- you would get one, when the
23 curtailment was coming -- soon, but, probably monthly.

24 That would make sense.

25 Q. And those statements showed the interest

1 and the curtailment fees?

2 A. Probably so.

3 I can't remember what one looks like, to
4 be honest.

5 Q. Aside from the statements that you got,
6 did you receive bills from DSC?

7 A. Bills like what? What do you mean?

8 Like, the statements would have what we
9 owed on it.

10 Are you talking about a separate bill?

11 Q. Uhm-hmm.

12 A. I don't think so.

13 I'm not sure. I don't think so.

14 Q. And do you remember if the place that you
15 went online to check your account was discoverdsc.com?

16 A. That sounds about right.

17 Q. And did you go online to discoverdsc.com
18 to look up information on your account?

19 A. Yes.

20 Q. And do you recall what information was
21 available there?

22 A. What I owed.

23 Q. Did it show, like, interest, curtailment
24 fees, principle --

25 A. I'm sure it did.

1 Q. And did it show the due dates?

2 A. Yes. I remember those.

3 Q. When you went on discoverdsc.com, do you
4 recall if it had information about, like, interest
5 rates and fees, generally?

6 A. I think so.

7 Q. Do you recall seeing a schedule of rates
8 and fees?

9 A. I believe so.

10 Q. So on a vehicle that you purchased using
11 your floorplan, when do you have to pay the floorplan
12 company?

13 A. Whatever the timeframe was, but I don't
14 remember what it was --

15 Q. Was it --

16 A. -- what we signed up for, and I can't
17 remember, because they had different types, so I don't
18 know.

19 Q. Do you recall that you had to pay the
20 floorplan company within a period of time after you
21 sold a vehicle that was floorplanned?

22 A. I don't remember the timeframe.

23 I just knew that if I purchased the car,
24 if I didn't sell it in a certain amount of time, then
25 there would be curtailment fees.

1 I remember that.

2 Q. But once you did sell a unit to the
3 retail customer, you had to pay off that unit with the
4 floorplan company, right?

5 A. Yes.

6 Q. And you had to pay off that vehicle
7 within a certain amount of time?

8 A. Yes.

9 Q. But you don't remember what that time
10 period was?

11 A. No, but it was like -- it wasn't a long
12 time.

13 Q. It was, like, 24 hours or 48 hours --

14 A. Something like that, yeah.

15 Q. If you weren't able to sell the vehicle
16 did you have to pay off the vehicle to the floorplan
17 company at a certain point?

18 A. Yes.

19 Q. How long was that?

20 A. Well, you could curtail it, and then you
21 could -- you could do that twice, and then after that,
22 once that time was up, I think, within, like, 24 to 48
23 hours, so something like that.

24 Q. So if the vehicle hadn't sold for, say,
25 120 days, then you'd still have to pay off the vehicle

1 within 24 to 48 hours of that?

2 A. Right.

3 Q. How did you know what the date was that
4 you had to pay off the vehicle by?

5 A. You just go up to the DSC site and it
6 will tell you what -- we pretty much -- we wrote down
7 when those curtailment times were coming.

8 Q. So if you're coming up to the end of the
9 curtailment period, you could also just pay off the
10 vehicle, even if you hadn't sold it, right?

11 A. Right.

12 Q. And then you wouldn't have to pay the
13 curtailment fee?

14 A. Right.

15 Q. When you were at Platinum, did you ever
16 go through a collateral audit?

17 A. Yeah, I think so.

18 Q. Do you know what I mean when I'm talking
19 about that?

20 A. Yeah. When they come out and they look
21 to see if the cars are there.

22 That's what you mean, right?

23 Q. You said to look to see if the cars were
24 there?

25 A. Right. Yeah, they did that from time to

1 time.

2 Q. Do you know how often that happened?

3 A. Maybe once a month, maybe.

4 Q. What happens if the floorplan company
5 does a collateral audit and the vehicle inventory is
6 missing or cannot be accounted for?

7 A. You cannot use the account.

8 I've had that happen.

9 Q. Did you have that happen with DSC?

10 A. Yes.

11 Q. What happened there?

12 A. I was at the auction. They came to do an
13 audit.

14 He was out of town with a car, and I
15 tried to buy a car, and I couldn't.

16 Q. You said, he was out of town with the --

17 A. That's when we was at Car Key.

18 Q. Okay.

19 A. So he was a salesperson.

20 Like, normally, when they cannot locate a
21 car and you could not verify it, then they will shut
22 you down.

23 Q. Do you remember when this happened,
24 approximately?

25 A. I don't.

1 Q. But it was when you were at Car Key, not
2 at Platinum?

3 A. Right.

4 Q. And do you remember if this was DSC?

5 A. Yes.

6 Q. So your understanding is that if the
7 floorplan company does a collateral audit, but there's
8 -- you know, some of the inventory's missing, then
9 your floorplan account basically shuts down and you
10 cannot buy more vehicles with that floorplan?

11 A. Right. They just want you to verify,
12 yeah, where the vehicle is.

13 Q. Did it ever happen when you were at
14 Platinum that --

15 A. I don't recall that. It could have.

16 I didn't have them at Platinum very long
17 anyway, because, like I said, I was doing away with
18 them, so.

19 Q. Do you remember if DSC did any collateral
20 audits when you were at Platinum?

21 A. I think they did.

22 Q. Can a lender recover payment from the
23 dealer, or collateral or inventory, if it deems itself
24 insecure?

25 A. Can they recover?

1 Like, how? What do you mean?

2 Q. Can they repossess collateral?

3 A. Yes, they can.

4 Q. And that's permitted under the contract,
5 right?

6 MR. AIREY: Object to the form. You can
7 answer.

8 THE WITNESS: You said, is that in the
9 contract?

10 BY MS. LEDBETTER:

11 Q. Yes. Is that permitted under the
12 contract?

13 A. That they could take the vehicles?

14 Yes, I think so.

15 I don't know what that contract entails,
16 I haven't seen it in so long.

17 Q. And so, just as a housekeeping thing,
18 sometimes Jake will object to the form because he
19 thinks there's something wrong with my question, but
20 unless he tells you not to answer, you can answer the
21 question.

22 A. Okay.

23 Q. He's just giving me an opportunity to fix
24 my question if I agree that there's something wrong.

25 A. All right.

1 Q. So when did you first start doing
2 business with DSC?

3 A. I want to say 2008.

4 Q. And that was at Car Key?

5 A. Correct.

6 Q. When did you first start doing business
7 with AFC?

8 A. Probably the same timeframe.

9 Q. Also at Car Key?

10 A. Right.

11 Q. And when did you first start doing
12 business with MAFS?

13 A. The same time.

14 All the reps came at the same time, and I
15 said yes, yes, yes.

16 Q. Okay. So back in 2008, do you remember
17 who the representative was from DSC that you spoke to?

18 A. I can't think of her name.

19 Something with an S. I cannot remember
20 this lady's name, and then Lundi took over after that.

21 Q. So there's somebody whose name you don't
22 remember, and then Lundi Touch was the
23 representative --

24 A. Right.

25 Q. -- at DSC? Okay.

1 And were you working with Lundi when you
2 were at Car Key?

3 A. Yes.

4 Q. So let's start with when you were at Car
5 Key back in 2008, when you first signed on with DSC.

6 Do you remember what you discussed with
7 the DSC rep at that time?

8 A. Like vaguely, you know. I just remember
9 the basics.

10 I can't -- I just remember that they were
11 offering the financing, and you have to pay what the
12 fees were, but I can't remember.

13 It's like buying a house. You know all
14 that paperwork and then you're just, like, okay.

15 Sign off.

16 Q. How did you decide what your line of
17 credit amount was going to be when you first signed on
18 with DSC?

19 A. I decided off of what I thought I needed,
20 to have enough vehicles to furnish my lot.

21 Actually, they gave me an amount up to --
22 a certain amount, and I think I went a little bit
23 below that.

24 Q. Do you remember what the rep told you
25 about financing back in 2008?

1 A. I don't. I remember some of it, but
2 specifics, I don't.

3 Q. Can you tell me what you remember?

4 A. I remember that they -- you know, they
5 give you a certain amount of money, whatever that
6 number was, I don't remember the number, and you had
7 to pay it back in a certain amount of time --

8 Q. (Moves head up and down.)

9 A. -- and if you couldn't pay it back at
10 whatever that first timeframe was, then you got a
11 curtailment, but you got charged for that. And then
12 the second curtailment you got charged for -- there
13 was a fee on those two curtailments.

14 And that's what I remember.

15 Q. Did you ask any questions of the rep?

16 A. I asked a few.

17 I didn't know too much about it, so I was
18 just pretty much letting her tell me what they
19 offered, and just trying to take it all in, but I
20 pretty much got the gist of it.

21 Q. Do you remember what questions you asked?

22 A. I don't.

23 Q. In that first conversation, did you talk
24 about interest at all?

25 A. I'm sure she probably mentioned it, but I

1 really don't remember.

2 I remember -- I really focused on those
3 curtailment fees, because it was extra. So, you know,
4 what that extra was, I was just, like, okay.

5 I'm sure she didn't mention interest, but
6 I didn't know, you know, really how it accrued or
7 anything like that, but they were pretty thorough, I
8 guess.

9 Q. And I just wanted to make sure I
10 understood you right.

11 Did you just say she did mention
12 interest, or you're pretty sure she didn't mention
13 interest?

14 A. I believe she did.

15 Q. Okay. And this person that you were
16 talking to is the person before Lundi, right?

17 A. Well, Lundi went over it with me, also.

18 Q. Okay. Do you remember what Lundi went
19 over with you?

20 Was it the same?

21 A. It was pretty much the same paperwork.

22 Q. And did Lundi Touch talk to you about
23 interest?

24 A. Lundi Touch, yes.

25 I don't know if we went over interest but

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1 if it was a part of the contract, they went over it
2 and pretty much said this is what it entails.

3 So whatever it was in that contract, she
4 probably did go over it.

5 Q. And when did Lundi go over the contract
6 with you?

7 A. Right before I signed.

8 Q. Was that in 2008, or was that in 2011?

9 A. I want to say eight.

10 Whenever I signed my first contract.

11 Q. With Car Key?

12 A. Right.

13 Q. And then did you sign a separate contract
14 on behalf of Platinum with DSC?

15 A. Yes.

16 Q. And that was in 2011, right?

17 A. I think so.

18 Q. So in either of these conversations, in
19 2008 -- well, actually.

20 Did you have -- sorry if I asked you this
21 already.

22 When you signed up with Platinum, or --
23 I'll start over again.

24 When you signed up with DSC on behalf of
25 Platinum, did you, again, talk to Lundi about the

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1 floorplan and how it worked?

2 A. No.

3 Q. So the only conversation you had with her
4 about the floorplan was back in 2008?

5 A. Correct.

6 Q. And you don't recall discussing with
7 Lundi when interest would start accruing?

8 A. No. What I'm saying is she went over --
9 everything was on there, but specifically how it
10 accrued, no, I do not recall that --

11 Q. She did not discuss that?

12 A. I'm not saying that she did not; I'm just
13 saying that I don't remember.

14 Q. And you don't remember asking about
15 interest, right?

16 A. No.

17 Q. So in 2011, Platinum Motors signed a
18 floorplan agreement with DSC; is that right?

19 A. You said when?

20 Q. In 2011.

21 A. Right.

22 (Perry Exhibit No. 3 was marked.)

23 BY MS. LEDBETTER:

24 Q. And she's handed you what's marked as
25 Exhibit 3, and feel free to flip through it, but does

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1 this look like your contract documentation with DSC?

2 A. (Complies.)

3 Yes, it does.

4 Yes.

5 Q. And Platinum's line of credit with DSC
6 was \$35,000, right?

7 A. Yes.

8 Q. So I'm going to walk through this
9 document and ask you about some specifics about it.

10 So on the first page, on the signature
11 line, is that your signature?

12 A. Yes.

13 Q. And you signed that on May 23rd, 2011?

14 A. Yes.

15 Q. And then flipping back several pages to
16 the page that, on the bottom, says NG003520.

17 A. (Complies.)

18 Got it.

19 Q. And is that your signature twice, on the
20 bottom?

21 A. Yes.

22 Q. And you signed -- and this is for the
23 Demand Promissory Note and Security Agreement, right?

24 A. Yes.

25 Q. And you signed that Demand Promissory

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1 Note on May 23rd, 2011, also?

2 A. Yes.

3 Q. Turning over to page NG0035022.

4 A. (Complies.)

5 Q. This is your term sheet for the Platinum
6 floorplan; is that right?

7 A. Yes.

8 Q. And that's your signature on the bottom?

9 A. Yes.

10 Q. And going to the next page, NG003523,
11 this is the Power of Attorney, right?

12 A. (Complies.)

13 Yes.

14 Q. And you signed that, as well?

15 A. Yes.

16 Q. And it shows that Lundi Touch was the
17 notary, right?

18 A. Yes.

19 Q. All right. Turning over, the next
20 document is the Individual Personal Guaranty, right?

21 A. On 24?

22 Q. And that starts on page 24.

23 A. Yes.

24 Q. And turning over to page 26, that's your
25 signature again, right?

1 A. Yes.

2 Q. And the next document, on page 27 and 28
3 is an ACH authorization, right?

4 A. Yes.

5 Q. And you signed that document?

6 A. Uhm-hmm, I did.

7 Q. And is that e-mail -- is that your e-mail
8 address?

9 It's on page 28?

10 A. Yes.

11 Q. Is that a personal e-mail address or was
12 that your business e-mail address?

13 A. Well, it was both at that time.

14 Q. Do you still use that e-mail address?

15 A. This is not even right.

16 Q. Okay.

17 A. It's kind of right, but that's not my
18 e-mail address.

19 So I need to say, no, that's not my
20 e-mail address.

21 Q. And then turning over to page 3531, the
22 Contract Quick Facts.

23 Is that your initials on that document?

24 A. Yes.

25 Q. Are these all of the documents that you

1 signed to obtain floorplan financing on behalf of
2 Platinum?

3 A. Yes.

4 Q. And do these documents contain
5 information about floorplan fees, and interest
6 charges?

7 A. Yes.

8 Q. So what did you understand the terms of
9 the contract to be, with respect to interest?

10 A. Well, really, I didn't pay the interest
11 any mind.

12 I just knew that there would be interest
13 and curtailment fees, but I didn't know how they
14 actually worked.

15 MR. AIREY: Are you at a good point to
16 break? It's been almost two hours.

17 She may need to feed the meter.

18 MS. LEDBETTER: Yeah. We can take a
19 break, if you want.

20 THE WITNESS: We're not done?

21 MS. LEDBETTER: Sorry. Yeah, if you need
22 to do something with the car.

23 THE WITNESS: All right. Thank you.

24 (A recess was taken.)

25 MS. LEDBETTER: Let's go back on the

1 record.

2

3 BY MS. LEDBETTER:

4 Q. So before we took a break, we were
5 looking at Exhibit 3, which is the contract
6 documentation.

7 Is there something -- can you point to
8 the place in the contract where it talks about
9 interest and fees?

10 A. Can I point to it?

11 Q. Yeah.

12 MR. AIREY: Object to the form of the
13 question.

14 BY MS. LEDBETTER:

15 Q. And you're looking at the term sheet,
16 right now?

17 A. (Complies.)

18 Okay.

19 Q. What's your understanding of where the
20 contract -- of the interest and fees?

21 A. Well, right here this says the --

22 Q. Where are you?

23 A. The contract --

24 MR. AIREY: I'll object, because I think
25 there's interest and fees for different types of

1 advances under this, so I don't know if you want to be
2 a little more specific, or you just want her to tell
3 you each and every one, where it talks about advance
4 in this 10-page document.

5 BY MS. LEDBETTER:

6 Q. That's fine. I'm just asking for your
7 understanding of what you would look to to determine
8 the interest and fees on this contract?

9 A. You're saying where -- would I look here
10 (indicating)?

11 Q. Yeah. Where would you look?

12 A. It says --

13 Q. And you're on the page that says term
14 sheet?

15 A. Term sheet, yes.

16 Q. Okay.

17 A. And it says contract rate.

18 Q. Uhm-hmm.

19 And that's what you would look at to
20 determine your interest?

21 A. Yes.

22 Q. And right above that, in that table, I
23 guess is that the curtailment fees that we've been
24 talking about?

25 A. Yes. That's the part I got, because

1 that's the part in bold, black letters.

2 Q. All right. So you understood when you
3 signed this contract that you would have to pay
4 interest and fees, right?

5 A. Well, I understood this curtailment, this
6 interest and fees, no, I did not understand this.

7 Q. Okay. So you did not understand that you
8 would have to pay interest on your floorplan?

9 A. I figured there would probably be
10 interest, but I didn't understand this. Like this was
11 not broke down to me.

12 This part here, this bold part, it's like
13 I keep referring to this because I remember this.

14 Q. And you're pointing to the table?

15 A. Right.

16 Q. Okay. And when did the curtailment
17 fees -- well, the curtailment fees would be charged
18 after a certain number of days, right?

19 A. Correct.

20 Q. And what day was the beginning of that
21 clock?

22 A. It depends on the plan that I had.

23 This one says 60 days and 30 and 30, and
24 they were flat rates. It says 10 percent -- yeah, it
25 was a \$85 fee.

1 So after the first 60 days.

2 Q. Right. And so that was the first day of
3 that 60-day time period?

4 A. What was the first day?

5 Q. Uhm-hmm.

6 A. From what date are you talking about?

7 Q. Well, I guess, what I'm asking you is
8 when would that 60 days start running?

9 A. It should start after I purchased the
10 car.

11 Q. So on the auction day?

12 A. Right, the day that I purchased at the
13 auction.

14 Q. And so 60 days after you purchased at the
15 car auction, if you hadn't paid off that car yet,
16 you'd have to pay a floorplan fee of \$85, right?

17 A. I would have to pay the \$85, right.

18 Q. But then you could roll over the unit,
19 and get an additional 30 days, right?

20 A. Right.

21 Q. And at the end of that 30 days you'd have
22 to pay \$735, right?

23 A. Right.

24 Q. And you could roll it over again and get
25 another 30 days, right?

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1 A. No. You're giving me three 30 days, or
2 you're saying two?

3 Q. Two, two.

4 A. Yeah.

5 Q. So then after a total of 120 days, that
6 was it, right, you had to pay off the car?

7 A. Right.

8 Q. And you understood that at the time you
9 signed this agreement?

10 A. Right.

11 Q. How did Platinum typically make payments
12 to DSC?

13 Did you make it through ACH payments?

14 A. Yes.

15 Q. Did you ever pay in checks and cash?

16 A. No, I don't think so.

17 Probably -- maybe a check, but normally,
18 ACH.

19 Q. And you said when you were at Platinum
20 you were able to go on to discoverdsc.com and look up
21 your information about your account, right?

22 A. Yes.

23 Q. When you went on to discoverdsc.com,
24 could you also initiate a payment?

25 A. Yes.

1 Q. Did you ever do that?

2 A. Yes, I think so. Yes.

3 Q. Is that generally how you initiated
4 payments to DSC, by going online?

5 A. Yes. After they moved, yes.

6 Q. What do you mean after they moved?

7 A. Because at one point they were local, and
8 we could go right to the office.

9 Q. Oh. There was like a branch office that
10 you could go to?

11 A. Right.

12 Q. Would you initiate payments at the branch
13 office?

14 A. Yes.

15 Q. And would you initiate ACH payments at
16 the branch office, or pay by check?

17 A. Both.

18 Q. Do you remember when DSC stopped having
19 branch offices?

20 A. I don't.

21 Q. Did they have branch offices while you
22 were at Platinum?

23 A. I don't think so.

24 Q. Did you, by any chance, remember the name
25 of the person from DSC that you couldn't remember

1 before? The person before Lundi Touch?

2 A. No.

3 Q. Did you talk to anybody other than Lundi
4 Touch from DSC?

5 A. Just anybody?

6 Q. Uhm-hmm.

7 A. Yes.

8 Q. Do you remember who?

9 A. Shawn Tabb.

10 There was a few people, but I remember
11 those two because I encountered them more often.

12 Q. Do you remember Shawn Tabb and Lundi
13 Touch?

14 A. Yes.

15 Q. And what was your understanding of Shawn
16 Tabb's role?

17 A. To do the audits.

18 Q. And what was your understanding of
19 Lundi's role?

20 A. She was the field rep, or sales rep,
21 also.

22 Q. What discussions did you have with Shawn
23 Tabb?

24 A. We talked about -- just the business, you
25 know, cars.

1 Q. I guess I'll ask you a more specific
2 question.

3 Did you ever talk to Shawn Tabb about
4 your -- the terms of your floorplan?

5 A. No.

6 Q. So you never talked to him about the fees
7 or the interest?

8 A. No.

9 Q. Or how the floorplan would be paid?

10 A. No.

11 Q. And with Lundi, aside from the
12 conversations that we've already talked about, did you
13 have any other conversations with her about the terms
14 of your floorplan?

15 A. Well, when we split, we had a
16 conversation about the floorplan staying there, and I
17 got this new floorplan. So I had two.

18 I had that one, which stayed at Car Key,
19 and that would stay there and eliminate me from that,
20 and -- he signed on to that, and then we talked about
21 starting this new one.

22 Q. And you said when we split.

23 Was that when Platinum became independent
24 from Car Key?

25 A. Correct.

1 Q. And in that conversation with Lundi, was
2 that around the 2011 timeframe?

3 A. That was probably -- yeah, 10, 11, when
4 they were switching over to '11.

5 Q. So in this conversation with Lundi Touch
6 in 2010 or 2011, did you discuss the floorplan with
7 respect to interest and fees?

8 A. No.

9 Q. You mentioned having spoken to other
10 people at DSC whose names you don't really remember.

11 Did you talk to any of them about the
12 terms of your floorplan?

13 A. No.

14 Q. So is it fair to say the only
15 conversation from DSC that you had about the terms of
16 DSC floorplan was back in 2008 with Lundi Touch?

17 A. Yes.

18 Q. And was it your understanding that Lundi
19 Touch was dealing with people in your region?

20 A. Yes.

21 Q. She didn't deal with all dealers
22 nationwide, right?

23 A. I don't know.

24 Q. And what about Shawn Tabb?

25 Was he focused on your region?

1 A. I think so. I'm not sure.

2 Q. Okay. And do you think that he was
3 working with dealers nationwide?

4 A. I'm not sure.

5 Q. Okay. Now you're a plaintiff in this
6 lawful, and is it your contention that employees of
7 DSC or NextGear made false representations to you?

8 A. Did they make false representations?

9 Q. (Moves head up and down.)

10 A. I don't think they were false.

11 Q. Okay. Are you suing based on something
12 that somebody said to you at some point?

13 A. Someone said to me?

14 Q. Uhm-hmm.

15 A. Like, bad to me or something?

16 Q. Well, or incorrect or?

17 A. Yeah, just not informed correctly.

18 Q. So are you saying they told you something
19 that was wrong?

20 A. Not that they told me something that was
21 wrong, but they just didn't tell me -- didn't go over
22 thoroughly of what actually was there.

23 Q. So do you believe that there was
24 something improper about how DSC charged interest on
25 the floorplan?

1 A. I think that if we were charged before
2 we -- if we were charged before we actually paid for
3 the vehicle, then, yeah.

4 I should have said it differently. If
5 the interest started before.

6 Q. So you're saying if interest started
7 running before you paid DSC for the vehicle?

8 A. Before they paid.

9 Q. Before DSC paid?

10 A. Right.

11 Q. Somebody else?

12 A. Right.

13 Q. So you think DSC should not have charged
14 interest before it transferred money to somebody else
15 for the vehicle that you purchased on your floorplan?

16 A. Right, did you say that right?

17 Right.

18 Q. Why was that improper?

19 A. Because if I had -- if I purchased a
20 vehicle from the auction, and my -- and they didn't
21 pay for it right then and there, then I should not
22 have been charged interest.

23 I should have only been charged interest,
24 you know, only from the time that it's paid for, if
25 that clarifies anything.

1 Q. Do you think you were able to take the
2 car from the auction before DSC transferred money to
3 the auction?

4 A. Do I think that I could have?

5 Q. Did you?

6 A. I don't know how it transpired. When
7 I -- what the -- when I purchased the car, I thought
8 it was paid for right then and there.

9 Q. Okay.

10 A. And interest started.

11 Q. But when you purchased the car using your
12 floorplan, you were able to take the car?

13 A. Right.

14 Q. Without putting any cash out of your own,
15 correct?

16 A. Right, yes.

17 Q. And you did not have any conversations
18 with anybody at DSC in which a DSC person told you
19 that -- anything about when interest and fees would
20 start to be charged, right?

21 A. Right.

22 Q. Did you ever ask about when interest
23 would be charged?

24 A. I can't recall.

25 I don't think I did.

1 Q. What made you think that it was wrong for
2 DSC to charge interest, as it did?

3 A. I just think that anywhere where you're
4 overcharged for something, that -- for anything, that
5 it's wrong.

6 Q. But what made you, I guess, realize that
7 you thought you were being overcharged?

8 A. Realize that they were charging interest?

9 Q. (Witness moves head up and down.)

10 A. I was told that, it happened to someone.

11 Q. By whom?

12 A. By him.

13 Q. Who's him, are you --

14 A. (Indicating.)

15 Q. Are you --

16 MR. AIREY: Object to form. She can't
17 say what she -- you can't say anything that we talked
18 about.

19 THE WITNESS: Oh.

20 BY MS. LEDBETTER:

21 Q. Okay. So prior to any conversations with
22 any lawyers, did you have any concerns about how DSC
23 was charging interest?

24 A. No.

25 Q. And when did you first speak with the

1 lawyers in this case?

2 A. I don't know if I can answer that.

3 MR. AIREY: You can answer when.

4 A. When I first -- yesterday.

5 BY MS. LEDBETTER:

6 Q. But, I mean, when did you first speak
7 with any lawyers in this case, though?

8 A. Oh, not -- any lawyer?

9 Ooh, a while ago, when they called me
10 about this.

11 Q. But was that like this year, or was that
12 several years ago?

13 A. It was this year, yes.

14 Q. In 2016?

15 A. Yes.

16 Q. I think we talked about this a little
17 earlier, but you understood that DSC had a security
18 interest in your inventory, to secure its loans,
19 right?

20 A. Yes.

21 Q. What does that mean, in your
22 understanding that?

23 A. That they had a security interest, that
24 they put their money out there, and they used the
25 vehicle as collateral.

1 Q. Did you ever have an issue with DSC
2 repossessing vehicles from you?

3 A. Yes.

4 Q. And when did that happen?

5 A. Right around 2010 or '11.

6 Q. Was that at Car Key or Platinum?

7 A. Yes, Car Key.

8 It actually happened at both, because
9 when I recovered some of the Car Key cars that was --
10 that they were still looking for, then I took those to
11 Platinum, and they got -- they came and got those.

12 Q. Let me see if I understand.

13 So you, while you were at the Car Key,
14 DSC repossessed some vehicles from Car Key?

15 A. I wasn't there.

16 Q. Okay. So that was -- after the time that
17 you left Car Key, your understanding was DSC
18 repossessed vehicles from Car Key?

19 A. Okay, yeah. But what happened is some of
20 the cars were sold, out of trust, so they came and got
21 the other ones, and some of them, I found myself, and
22 I brought them to where I was at Platinum.

23 Q. So who sold the cars out of trust?

24 A. The other dealer/operator.

25 Q. At Car Key?

1 Q. This is a document that's from the
2 records of NextGear that was prepared in this
3 litigation.

4 MR. JURKIEWICZ: Would you like to borrow
5 my glasses?

6 THE WITNESS: Yes.

7 A. Okay.

8 BY MS. LEDBETTER:

9 Q. And does this appear to be an accurate
10 list of the vehicles you floorplanned with DSC?

11 MR. AIREY: And, just to be clear, this
12 is something that was prepared since this litigation
13 has been filed.

14 This isn't something that you would have
15 saw while you were in business, just to put it into
16 perspective.

17 THE WITNESS: Okay. Now what's the
18 question.

19 BY MS. LEDBETTER:

20 Q. And there's some on -- a little bit on
21 the back, as well.

22 Does this appear to be an accurate list
23 of the vehicles that Platinum floorplanned with DSC?

24 A. It looks like -- some of these cars, I'm
25 familiar, yes, but these look like Car Key cars.

1 This doesn't look like -- I remember --
2 this doesn't look like stuff that Platinum did.

3 Q. Okay. I'll come to that in a second.

4 Does this look like it's about the right
5 number of vehicles that Platinum floorplanned with
6 DSC?

7 A. It could be.

8 Q. So if you take a look at the column
9 titled Seller Auction Name.

10 A. Okay. I'm there.

11 Q. And if you look down a few lines, there
12 are several that list Car Key Auto as the seller or
13 auction?

14 A. Yes, I see that.

15 Q. Did you obtain cars from Car Key, and
16 then put them on the Platinum floorplan?

17 A. No. So you're saying -- say that again.

18 Q. Did Platinum obtain from Car Key Auto and
19 put them on Platinum's floorplan?

20 A. I think when we were transferring, I
21 think so. I think so.

22 I'm not sure.

23 Q. So you think when --

24 A. Because I see this car here, and I
25 remember this car, this Lexus. It was one of the cars

1 that I recovered, and took to the lot, and I think
2 they took it back.

3 The other ones, I can't -- and this Jeep,
4 I remember these. But these were -- most of these
5 cars look like they were on Car Key's lot, but,
6 anyway.

7 Q. So you think that when you were
8 transitioning from Car Key to Platinum, you might have
9 taken some cars from Car Key's lot and put them on
10 Platinum floorplan?

11 A. We did do that, but Lundi was there. We
12 did that when we did the split, and I can't remember,
13 I just remember, when we did the split, we did do
14 that.

15 Q. And then are you also saying that you
16 think some of those cars ended up being repossessed
17 because of something that Car Key did?

18 A. Right.

19 Q. And if you look further down on Seller
20 Auction Name, it says "Med Transit Auto Sales"?

21 A. Yes.

22 Q. Who is that?

23 A. That's another dealer.

24 Q. So did you purchase vehicles from Med
25 Transit Auto Sales and put those on your floorplan?

1 A. Yes.

2 Q. And this document suggests that Platinum
3 only paid in full for about five vehicles out of about
4 20 that floorplanned with DSC.

5 Does that sound right now?

6 A. Only paid for?

7 What do you mean? Just paid them off?

8 Q. Right.

9 A. That could be right.

10 Q. You mentioned that Car Key had sold cars
11 out of trust.

12 Did Platinum ever sell cars out of trust?

13 A. I think so, yes.

14 Q. Do you remember what the circumstances of
15 that were?

16 A. I think they were -- these cars -- from
17 what I remember, we had split the cars, and I -- what
18 happened was the cars were there, and because we split
19 off, they put the debt on Platinum, I owed them this
20 debt because all was in my name.

21 So the bottom line is it all sold out of
22 trust from me, because they were all in my name.

23 Q. And what's your understanding of selling
24 it out of trust?

25 What does that mean?

1 A. Selling the car, and not getting the
2 money, and not paying them in the timeframe.

3 Q. Aside from those cars that came from Car
4 Key Auto, did Platinum ever sell any other cars out of
5 trust?

6 A. No.

7 Q. Do you know whether DSC ever declared
8 Platinum's line of credit in default?

9 A. Yes.

10 Q. When was that?

11 A. I don't remember.

12 Q. Do you have an approximate timeframe,
13 2011, 2012?

14 A. Probably '12 maybe.

15 It was shortly after this.

16 Q. What led to that default?

17 A. The cars being -- these cars being sold
18 out of trust.

19 Q. Do you remember if you made any payments
20 that were returned for insufficient funds?

21 A. No.

22 Q. You don't think you did?

23 A. No.

24 Q. Do you know if there was anything else
25 that led to DSC declaring a default -- or declaring

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1 Platinum in default, excuse me?

2 A. No, that was it.

3 Just pay the paperwork. That was it.

4 Q. Did Platinum have any issues with other
5 trade creditors around that same time?

6 A. We didn't have any more creditors.

7 Q. Did Platinum have any issues with
8 payments to auctions around that time?

9 A. Auctions? No.

10 Q. Did Platinum have any problems being able
11 to pay at auctions?

12 A. Yes.

13 Q. When was that?

14 A. I think right around -- probably '13.

15 Q. So that was after the default with DSC?

16 A. Yeah, somewhere around then.

17 I can't remember exactly. Somewhere
18 between 12 and 13, or 11 or 12, somewhere in that --

19 Q. Was that around the same time as the
20 default with DSC or --

21 A. I don't think all of that was going on
22 around -- it was, like, snowballing at that point, so
23 it was around or after that time.

24 I don't really know exactly.

25 Q. Was Platinum ever investigated by any

1 police or government agency?

2 A. No.

3 Q. Never investigated by, like, the
4 Department of Motor Vehicles?

5 A. No.

6 Q. Have you ever -- well, has -- did
7 Platinum ever floor the same car more than once?

8 A. Could have.

9 Q. And how would that work?

10 A. You would floor it, pay it off, and then
11 floor it again.

12 Q. So you'd pay it off even if you hadn't
13 sold it, and then floor it again?

14 A. Yeah. Let's say the curtailment came up
15 and then you paid it off, and then if you needed
16 money, then you'd take it, and then you floor it
17 again.

18 Q. Did you ever participate in any online
19 vehicle auctions?

20 A. Yes.

21 Q. And which auctions did you participate
22 in?

23 A. IAA, Manheim, Richmond, Richmond,
24 Richmond Auto Auction. That's probably about it.

25 Q. And did you participate in those online

1 auctions with Car Key or Platinum or both?

2 A. Both, probably.

3 Q. So Platinum participated with IAA,
4 Manheim, and Richmond?

5 A. Right.

6 Q. Did you floorplan vehicles that you
7 bought on those online auctions?

8 A. Probably from Manheim only. Maybe IAA --

9 Q. Did you floorplan --

10 A. Yeah. Some of them.

11 Q. Sorry. I didn't mean to interrupt.

12 Did you floorplan those vehicles from IAA
13 and Manheim when you were at Platinum or when you were
14 at Car Key, or both?

15 A. Probably both.

16 We did more online at Platinum, but
17 probably both.

18 Q. Have you ever sold cars to another dealer
19 at an auction for a prearranged price?

20 A. For a prearranged price? I don't
21 understand.

22 At an auction?

23 Q. (Moves head up and down.)

24 A. There's no prearranged price.

25 Q. So have you ever come to an agreement

1 took a garnishment on it.

2 I couldn't understand why they took a
3 garnishment when I'm willing to pay -- you know, I was
4 making payments. And then when she intervened, we
5 were going to have a forgive -- then they took a
6 garnishment.

7 I will pay. If you give me a payment
8 plan, I'm going to pay, if I can. So it was just a
9 shock to me that they did that.

10 Q. Do you have a copy of the payment plan
11 that you entered with DSC?

12 A. I don't. You should have had that.

13 If you have this, they should have gave
14 you that.

15 Q. Do you have a copy of it?

16 A. I may. I don't know if I have it on
17 hand.

18 Q. Can you go back through your records --

19 A. I will.

20 Q. -- and see if you have a copy of that
21 payment plan, and if you have, can you give it to your
22 lawyer so he can produce it in this case?

23 A. (Witness moves head up and down.)

24 I will.

25 Q. Did you ever stop making payments under

1 that payment plan?

2 A. I did.

3 Q. For how long did you stop making
4 payments?

5 A. I'm not sure.

6 We were -- when I stopped, we were in
7 conversation of, you know, trying to get the
8 forgiveness. So I called and, you know, tried to make
9 arrangements with them and they were trying to work
10 with me, I thought.

11 Q. How much were you paying per month under
12 the payment plan?

13 A. I don't.

14 Q. Do you have a ballpark?

15 A. I don't.

16 Q. A thousand dollars, a hundred dollars?

17 A. It was hundreds, maybe three, four.

18 I really don't remember.

19 Q. How much did you pay off through that
20 payment plan?

21 A. How much did I pay off? I don't
22 remember.

23 I just know when I looked at these
24 numbers, and I was, like, no, this is too much.

25 Q. So do you think you paid off closer to

1 \$1,000, \$10,000, \$50,000?

2 A. When I looked at the number, I thought it
3 was 10,000 over, and that was a while back, but I'd
4 have to go back over the numbers and then I can --

5 Q. Do you have records of the payments that
6 you made to DSC under the payment plan?

7 A. I may.

8 Q. Can you look for those records, and if
9 you find them, can you give them to your lawyer to
10 produce?

11 A. I will.

12 Q. Okay. So you mentioned a garnishment.

13 Were your wages garnished?

14 A. Yes.

15 Q. And are your wages still being garnished?

16 A. Yes.

17 Q. Do you know how much, in total, was
18 deducted for your wages from the garnishment?

19 A. No, but I have the records of that.

20 Q. All right. Would you give those to your
21 attorney?

22 A. I surely can.

23 Q. So as you sit here today, do you know how
24 much you owe to NextGear?

25 A. No, I don't.

1 Do you?

2 Q. No. As you sit here today, do you
3 believe that you still owe money to NextGear?

4 A. Do I owe?

5 Yeah, I do, but I will say, under our
6 agreement, no, but because it was in my name, I have
7 to take responsibility, but if we can find Lundi, she
8 can release me of that, or if I can find those
9 documents that I signed to release me from that
10 contract, then, rightfully, I should not go.

11 Q. So is it your view that the money you
12 owed to DSC is because of a debt of Car Key rather
13 than a debt of Platinum?

14 A. Right, the majority of it.

15 Q. Do you believe Platinum owes any money to
16 DSC?

17 A. Yes, yes.

18 Q. You've alleged in the amended complaint
19 in this case that NextGear blacklisted Platinum.

20 Are you familiar with that claim?

21 A. Uhm-hmm, I mean, yes.

22 Q. What's your understanding of how NextGear
23 blacklisted Platinum?

24 A. Well, the understanding is once you owe
25 them, then they -- their connection with the auctions,

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1 and they put you on a list where you can't purchase
2 anymore.

3 That's pretty much it.

4 Q. Is your understanding that they put you
5 on a list that they will not floorplan vehicles for
6 you anymore, or is the list different than that?

7 A. I think the list is comprised of more
8 than one thing.

9 You can't buy from the auction, you can't
10 floorplan with them, you can't floorplan with other
11 floorplan companies. So I don't think it's just one
12 thing.

13 I don't even know what blacklist is. I
14 think it's a term that was given, so I don't know if
15 it's, like, a real term, but that's pretty much what
16 it consists of.

17 Q. How did you first hear of this list?

18 A. Well, I'm not sure.

19 I've heard it a few times, and I'm not
20 sure if it was my first encounter when I went and it
21 happened to me, but I know a lot of dealers have
22 talked about it.

23 Q. So you learned about it from other
24 dealers?

25 A. Yes.

1 Q. And you said -- you mentioned the first
2 time something happened to you --

3 A. When I went to the auction, and that car
4 was gone, and then I couldn't purchase.

5 Q. So the auction wouldn't let you purchase
6 a vehicle?

7 A. Right.

8 Q. Would they let you come into the auction?

9 A. Yeah. Well, I did have one.

10 When I was at Manheim, I couldn't even
11 get in. They were, like, no, you couldn't even enter.

12 Q. When was that?

13 A. That was probably around '13.

14 Q. Do you remember when in 2013?

15 A. I don't. Around '13, '14, so I don't.

16 I'm sure they have a record of it,
17 though.

18 Q. Have there been any -- what auction, what
19 Manheim auction was that?

20 A. I think that was Fredericksburg.

21 Q. Have there been any other auctions that
22 you couldn't get into?

23 A. Tidewater is the first one.

24 Q. And what happened at Tidewater?

25 A. That's when the car -- they couldn't find

1 the vehicle, so they were just, like, you couldn't --
2 I couldn't purchase.

3 Q. They couldn't find the vehicle; is that
4 what you said?

5 A. Right. They couldn't verify it.

6 When they came to do the audit, they
7 could not verify it.

8 Q. Who's "they"?

9 A. DSC.

10 Q. Okay.

11 A. When we could not verify the vehicle,
12 then -- I was at the auction when they were at the
13 dealership.

14 So I guess they called the dealership,
15 and was, like, no.

16 Car Key cannot buy until this vehicle is
17 verified.

18 Q. This is what we talked about earlier?

19 A. Correct.

20 Q. There was a collateral audit, and at that
21 time you were at the auction, and because there was a
22 vehicle missing in the audit, you couldn't purchase a
23 vehicle using the floorplan, at the auction?

24 A. Correct.

25 Q. And this is when you were at Tidewater?

1 A. Tidewater Auto Auction, yes.

2 Q. And it was also when you were at Car Key
3 Auto, right?

4 A. Correct.

5 Q. Do you remember when that happened?

6 A. No.

7 Q. Were you able to go back to Tidewater
8 after that and --

9 A. Yes.

10 Q. -- and buy cars?

11 Were you ever -- aside from that
12 situation, were you ever not allowed to buy cars at
13 Tidewater?

14 A. I think so. I think twice.

15 When we were switching over, and I was
16 under another dealership; and -- why couldn't we buy?
17 Something happened with the dealership and we could
18 not buy --

19 Q. What dealership is that?

20 A. -- but I don't know -- it's Top Notch
21 Auto.

22 Q. So you were working for Top Notch Auto?

23 A. I was a salesperson, yes.

24 Q. And you were buying cars at auction --

25 A. Correct.

1 Q. -- for Top Notch Auto?

2 A. Yes.

3 Q. And for some reason they wouldn't let you
4 buy cars?

5 A. Yes, I can't remember the facts.

6 Q. And when were you at Top Notch Auto?

7 A. From '14 to '15.

8 Q. And you don't know why you weren't able
9 to buy cars at Top Notch?

10 A. No. It was something going on.

11 I really don't know.

12 Q. And was it that you couldn't buy cars at
13 all, or you couldn't put a car in your floorplan?

14 A. I don't even know if they had a
15 floorplan. I was a salesperson there.

16 I just know when we went to buy, we were
17 shut down, we couldn't go in.

18 It cleared up in a couple days, and we
19 could go, but I just remember that incident.

20 Q. Okay. So there was an incident that
21 happened when you were at Top Notch Auto, where you
22 couldn't buy cars, but then, once that was cleared up,
23 you could go back to the same auction and buy cars?

24 A. Yes.

25 Q. So when was the last time you bought cars

1 at Tidewater Auto Auction?

2 A. Probably 2015.

3 Sometime in '15.

4 Q. When you purchased cars at Tidewater,
5 were you able to pay in cash or check?

6 A. Yes.

7 Q. And that was throughout the time that you
8 were doing business at Tidewater?

9 A. Yes.

10 Q. And, I guess, during the time periods
11 that you had a floorplan, you could also use your
12 floorplan at Tidewater?

13 A. Yes.

14 Q. Is it your understanding that NextGear,
15 or DSC, has attempted to prohibit Platinum from
16 participating in auctions?

17 A. I don't think me, per se.

18 I just think they have a deal with the
19 auction whereas if they have a issue with a certain
20 dealership, whatever that is, then they have an
21 agreement that they can shut you down.

22 Q. And do you mean that DSC can prevent you
23 from buying vehicles on their floorplan?

24 A. Yes, and -- yes, yes.

25 Q. Can they do anything else?

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1 A. I really don't know what their power is,
2 but from what I hear, they can keep you from buying at
3 the auction because of the relationship that they have
4 with the auctions.

5 Q. And you're saying regardless of whether
6 you're buying using a floorplan?

7 A. Right.

8 Q. Have you ever experienced that?

9 A. No. I've just experienced where they
10 will not let me buy because of a vehicle -- of an
11 audit.

12 Q. Where you couldn't buy on the floorplan
13 because of some of the collateral was missing?

14 A. Yes.

15 Q. Are you familiar with something called
16 the KL Book?

17 A. The KL Book?

18 Q. You've never heard of that before?

19 A. The KL Book?

20 No. There are so many terms, I don't
21 know, I could have heard it, I don't know.

22 What's in the book?

23 Q. You're not familiar with the term, the KL
24 Book?

25 A. No.

1 Q. Do you know what an auction insurance
2 agency is?

3 A. What?

4 Q. Do you know what an auction insurance
5 agency is?

6 A. Auction insurance agency?

7 No.

8 Q. Are you familiar with a company, Cox
9 Enterprises?

10 A. No.

11 Q. Do you know that they're a defendant in
12 this case?

13 A. Yeah.

14 Q. Are you familiar with Cox Automotive?

15 A. No.

16 Q. Are you aware that they're a defendant in
17 this case?

18 A. Yes.

19 Q. And do you know who John Wick is?

20 A. No.

21 Q. Do you know if he's a defendant in this
22 case?

23 A. Do I know if he is?

24 I saw his name, but -- so I guess, yes.

25 Q. Is it your understanding that there's

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1 some kind of agreement between Cox Enterprises, Cox
2 Automotive, John Wick and NextGear?

3 A. That there's agreement with them?

4 I just know that they're all there.

5 I don't know what the agreement is. I'm
6 not aware what that is.

7 Q. And why did you sue Cox Enterprises?

8 A. Why did I sue them?

9 I guess because they're part of NextGear.

10 Q. Any other reasons?

11 A. I don't know who they are.

12 Q. Are you aware of anything that they've
13 done that you think is wrong?

14 A. I don't know who they are, so I don't
15 know what they do.

16 So I can't say they did anything wrong,
17 so, no.

18 Q. How about Cox Automotive?

19 Why did you sue them?

20 A. I don't know who they are.

21 Q. Well, you sued them.

22 Why did you sue them?

23 A. I guess because they're connected to
24 NextGear.

25 Q. Okay. Are you aware of anything that Cox

1 Automotive has done?

2 A. I don't know what Cox Automotive does, to
3 say they didn't do anything wrong.

4 Q. So you can't point to anything that you
5 believe Cox Automotive has done that's wrong?

6 A. I don't know who they are, to say they'd
7 do anything wrong; do you understand?

8 I know who NextGear and DSC is, but I
9 don't know who they are.

10 Q. Right. So you don't know anything wrong
11 that they've done, that Cox Automotive has done?

12 A. I don't know them, to say that they've
13 done anything wrong.

14 Q. And what about John Wick?

15 A. I don't know --

16 Q. You don't know him?

17 A. -- him.

18 Q. And you don't know whether he's done
19 anything wrong or not?

20 A. I don't know who he is, to say that he's
21 done anything wrong.

22 Q. And you don't know why you sued him?

23 A. I just know he's a part of this, so, I
24 guess that's why.

25 Q. What's your understanding of -- what's he

1 a part of?

2 A. I don't -- all I know is he's on the
3 paperwork.

4 So I guess he's affiliated with NextGear
5 somehow, so that's why he's included.

6 Q. And you don't know -- other than that,
7 you don't know any reason why he would be included in
8 the -- in this case?

9 A. I don't know anything about him.

10 Q. Are you aware of any benefit that
11 Platinum conferred on John Wick?

12 A. You said what?

13 Q. Did Platinum do anything that benefited
14 John Wick, to your knowledge?

15 A. I don't know who he is.

16 Q. And you don't know whether Platinum did
17 anything that benefited Cox Enterprises?

18 A. No.

19 Q. And you don't know whether Platinum did
20 anything that benefited Cox Automotive?

21 A. No.

22 Q. When was Platinum's last day of business?

23 A. June of -- yeah, June of -- I know it's
24 been two years -- the 14th.

25 Q. What was Platinum's net income at that

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1 time?

2 A. I don't know.

3 Q. What was Platinum's net income prior to
4 signing the Floorplan Agreement with DSC in 2011?

5 A. I don't know.

6 I'd have to look that up.

7 Q. Do you have records that could tell you
8 Platinum's net income at both of those times?

9 A. I may be able to come up with that.

10 Q. How did Platinum's business change from
11 2011 to 2014?

12 A. Well, it changed, far as -- we were using
13 mostly cash.

14 Q. Throughout that whole time?

15 A. Most of it.

16 Q. Did Platinum's business grow from 2011 to
17 2014, or did it go up and down, did it shrink?

18 A. We probably were -- we fluctuated a
19 little bit, as businesses do, but we didn't go too far
20 up or too far down.

21 Q. Do you remember how much money you made
22 from Platinum at any point from 2011 to 2014?

23 A. I would have to look at the taxes. I
24 couldn't tell you exactly, but --

25 Q. But that --

1 A. -- I have the records.

2 Q. -- information should be reflected in
3 your tax returns?

4 A. Yeah.

5 Q. During 2011 through 2014 when you were
6 with Platinum, you had some side businesses here and
7 there, as well, right?

8 A. Well, what were the "side businesses"?

9 Q. You were getting income from other
10 sources, as well as Platinum?

11 A. That was, like, my sole income.

12 Q. Okay. So your testimony is your sole
13 income from 2011 to 2014 all came from Platinum?

14 A. No, it didn't all come from there, but
15 that was my sole income.

16 I sold a house here or there.

17 Q. So you may have gotten income from other
18 sources --

19 A. Yes.

20 Q. -- from 2011 to 2014?

21 A. Yes.

22 Q. But I think you're saying that the
23 majority of your income during that time period came
24 from Platinum?

25 A. Yes.

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1 Q. How have you been damaged by the interest
2 charges that you think were wrong?

3 A. Well, I just think that if it was money
4 taken from me, that I was wronged that way.

5 Q. Do you know how much money was taken that
6 you think should not have been?

7 A. I don't know the amount.

8 Q. How would you figure that out?

9 A. I don't know.

10 Q. So you're suing NextGear in this case.

11 How much do you think NextGear owes you?

12 A. I have no idea.

13 Q. Do you have a ballpark?

14 A. No, I don't.

15 Q. Ten thousand, a hundred thousand, a
16 million dollars?

17 A. I wouldn't even know how to start to
18 calculate, to figure out a number.

19 Q. Now, do you think that you were damaged
20 by what you've referred to in the complaint as
21 blacklisting?

22 A. Was I damaged by being blacklisted?

23 Q. Uhm-hmm.

24 A. No. It was probably a day of work, just
25 being -- so I was damaged that way, but.